

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

V.

**COSMOS FOUNDATION, INC. D/B/A
HARMONY SCIENCE ACADEMY
(AUSTIN),**

Defendant.

CIVIL ACTION NO. 1:12-cv-1003

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under the Equal Pay Act of 1963 to restrain the unlawful payment of wages to employees of one sex at rates less than the rates paid to employees of the opposite sex, and to collect back wages due to an employee as a result of such unlawful payments. As alleged with greater particularity in the Statement of Claims section (paragraphs eight through eleven) below, the Equal Employment Opportunity Commission (the “Commission”) alleges that Defendant, Cosmos Foundation, Inc. d/b/a Harmony Science Academy (Austin), paid Nicole M. Tuchscherer, a female art teacher, wages which were and are less than the rates paid to its male teachers including Enes Baskan, a male art teacher, who performed the same or substantially equal work.

The Commission further alleges that Defendant, Cosmos Foundation, Inc. d/b/a Harmony Science Academy (Austin), also discriminated against Nicole M. Tuchscherer by failing to renew her employment/teaching contract and thus terminating her employment because she opposed a practice made unlawful by the Equal Pay Act.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29 U.S.C. § 206(d).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Texas, Austin Division.

PARTIES

3. Plaintiff, the Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and is expressly authorized to bring this action by Sections 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, (“Charter School”), has continuously been an Instrumentality and part of the public school system of the State of Texas doing business in the City of Austin.

5. At all relevant times, Defendant, Charter School, has continuously been a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x).

6. At all relevant times, Defendant, Charter School, has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all relevant times, Defendant, Charter School, has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been engaged in the operation of a school system including an elementary or secondary school.

STATEMENT OF CLAIMS

8. Since at least August 1, 2005, Defendant, Charter School, has violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying wages to Nicole M. Tuchscherer an art teacher at a Charter School operated by the Cosmos Foundation, Inc. at rates less than the rates paid to male teachers including Enes Baskan a male art teacher at a Charter School operated under the same charter by the Cosmos Foundation, Inc. for substantially equal work, the performance of which required equal skill, effort, and responsibility, and which are performed under similar working conditions.

9. Since at least May 2010, Defendant, Charter School, violated Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), by discriminating against Nicole M. Tuchscherer by failing to renew her employment/teaching contract and thus terminating her employment because she complained to the school's principal about her unequal pay in comparison to male teachers.

10. As a result of the acts complained of above, Defendant, Charter School, unlawfully has withheld and is continuing to withhold the payment of wages due to Nicole M. Tuchscherer.

11. The unlawful employment practices complained of above in paragraphs eight (8) through ten (10) above were and are willful.

PRAYER FOR RELIEF

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining the Defendant, Charter School, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from retaliating against employees on the basis of protected activity, by terminating or threatening to terminate employees who complain or make inquiries under the Equal Pay Act regarding the wages the Defendant, Charter School, pays to employees of the opposite sex, or in any manner discriminating against such employees;

B. Grant a permanent injunction enjoining Defendant, Charter School, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from discriminating within any of its establishments between employees on the basis of sex, by paying wages to employees of one sex at rates less than the rates at which it pays to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions;

C. Order Defendant, Charter School, to institute and carry out policies, practices and programs which provide equal employment opportunities for women, and which eradicate the effects of its past and present unlawful employment practices;

D. Grant a judgment requiring Defendant, Charter School, to reinstate Nicole M. Tuchscherer and pay appropriate back wages in amounts to be determined at trial, an equal sum as liquidated damages, or prejudgment interest in lieu thereof, to Nicole M. Tuchscherer whose wages were being unlawfully withheld and who was unlawfully discharged as a result of the acts complained of above;

E. Grant such further relief as the Court deems necessary and proper in the public interest; and

F. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

P. DAVID LOPEZ
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

/s/ Edward Juarez
by permission of Robert A. Canino

ROBERT A. CANINO
Regional Attorney
Oklahoma State Bar No. 011782

/s/ Edward Juarez
by permission of Judith G. Taylor

JUDITH G. TAYLOR
Supervisory Trial Attorney
Texas State Bar No. 19708300
E-mail: judith.taylor@eeoc.gov

/s/ Edward Juarez

EDWARD JUAREZ
Senior Trial Attorney
Texas Bar No. 24014498
E-mail: eduardo.juarez@eeoc.gov

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

San Antonio Field Office
5410 Fredericksburg Rd., Suite 200
San Antonio, Texas 78229-3555
Telephone: (210) 281-7613
Facsimile: (210) 281-7669

ATTORNEYS FOR PLAINTIFF